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AMENDED IN SENATE MARCH 30, 2000

## **SENATE BILL**

**No. 1742**

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### **Introduced by Senator Hughes**

(Principal coauthor: Assembly Member Rod Pacheco)

**(Coauthors: Senators Alarcon, Murray, Ortiz, Rainey, Solis,  
and Vasconcellos)**

(Coauthors: Assembly Members Alquist, Havice, Honda,  
Kuehl, Longville, Romero, Strom-Martin, Washington, and  
Zettel)

February 23, 2000

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An act to add Chapter 4 (commencing with Section 2950) to Part 5 of Division 4 of the Probate Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to adult abuse.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1742, as amended, Hughes. Adult abuse.

Existing law provides for misdemeanor and felony sanctions, including imprisonment and fines, for offenses involving the abuse of an elder or dependent adult, depending upon the circumstances.

Existing law provides for various procedures for the protection of elders and dependent adults by the public guardian and by programs implemented by the State Department of Social Services.

Existing law authorizes a public guardian who is authorized to take possession or control of property to issue a written certification to that effect, and would require a financial institution or other person to provide the public guardian with information concerning property of a proposed ward or conservatee and surrender property of that person to the public guardian that is subject to loss, injury, waste, or misappropriation.

This bill would authorize certain peace officers to issue a declaration that an elder person, as defined, is substantially unable to manage his or her financial resources or to resist fraud or undue influence, there exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentation or the mental incapacity of the elder person, there is probable cause to believe a crime is being committed against that person, the crime is connected to his or her inability to manage his or her financial resources or to resist fraud or undue influence, and he or she suffers from that inability as a result of deficits in one or more mental functions. Upon receipt of the declaration, the public guardian would be authorized to rely on the information contained in the declaration to take immediate possession and control of the property of the elder person. The bill would authorize the public guardian to issue a certification of that fact, which certification would require financial institutions and other persons to submit information about, and possession of, property of the victim. This bill would also establish a process whereby a person identified as a victim in a declaration may bring an ex parte petition in the superior court for an order quashing the certification.

The bill would also require the public guardian to seek individuals to manage the estate of the elder person, under certain circumstances and in accordance with specified criteria.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Chapter 4 (commencing with Section 2950) is added to Part 5 of Division 4 of the Probate Code, to read:

CHAPTER 4. FINANCIAL ABUSE OF MENTALLY IMPAIRED  
ELDERS

Article 1. General

2950. (a) ~~(1)~~ It is the intent of the Legislature to do all of the following:

~~(A)~~

(1) Reduce the incidence of financial abuse perpetrated against mentally impaired elder adults.

~~(B)~~

(2) Minimize monetary losses to mentally impaired elder adults as a result of financial abuse.

~~(C)~~

(3) Facilitate timely intervention by law enforcement, in collaboration with the public guardian, to effectively protect mentally impaired elder adult victims of financial abuse, and to recover their assets.

~~(2)~~

(b) Any peace officer or public guardian of a county that has both of the following, as determined by the public guardian of that county, may take the actions authorized by this chapter:

~~(A)~~

(1) The existence of sufficient law enforcement personnel with expertise in the assessment of competence.

~~(B)~~

(2) The existence of a law enforcement unit devoted to investigating elder financial abuse and the enforcement of laws applicable to elder abuse.

~~(3)~~

(c) This chapter shall be coordinated with existing mandated programs affecting financial abuse of mentally

1 impaired elders that are administered by the adult  
2 protective services agency of the county.

3 ~~(b) “Financial abuse specialist team” means a~~  
4 ~~multidisciplinary personnel team, as defined in Section~~  
5 ~~15753.5 of the Welfare and Institutions Code, to which all~~  
6 ~~of the following apply:~~

7 ~~(1) At least one member is trained in the prevention~~  
8 ~~of financial abuse of elder persons, at least one member~~  
9 ~~is trained in the identification of financial abuse of elder~~  
10 ~~persons, at least one member is trained in the treatment~~  
11 ~~of financial abuse of elder persons, and at least one~~  
12 ~~member is trained in all of the foregoing services, and the~~  
13 ~~financial abuse specialist team contains members who, in~~  
14 ~~the aggregate, are qualified to provide a broad range of~~  
15 ~~services related to the financial abuse of elder persons.~~

16 ~~(2) The team includes at least one person from each of~~  
17 ~~the following categories:~~

18 ~~(A) Psychiatrists, psychologists, marriage, family, and~~  
19 ~~child therapists, clinical social workers, or other licensed~~  
20 ~~mental health professionals.~~

21 ~~(B) Public guardian.~~

22 ~~(C) Police officers or other law enforcement agents.~~

23 ~~(D) District attorney’s office.~~

24 ~~(E) Medical personnel with sufficient training to~~  
25 ~~provide information regarding health services.~~

26 ~~(F) Social workers with experience or training in~~  
27 ~~prevention of abuse of elder persons.~~

28 ~~(G) A member of the county adult protective services~~  
29 ~~program.~~

30 ~~(H) A member of the county long-term care~~  
31 ~~ombudsman program.~~

32 ~~(I) A representative of a financial institution, as~~  
33 ~~defined in subdivision (e) of Section 2951.~~

34 ~~(J) An attorney proficient in the practice of elder law.~~

35 2951. The definitions contained in this section shall  
36 govern the construction of this chapter, unless the  
37 context requires otherwise.

38 (a) “Declaration” means a document that  
39 substantially complies with the requirements of Section  
40 2954, and is signed by both a peace officer and another

~~member of the financial abuse specialist team~~ a supervisor from the county's adult protective services agency and provided to the public guardian in accordance with subdivision (b) of Section 2952.

(b) "Elder person" means any person residing in this state, 65 years of age or older.

(c) "Financial abuse" means a situation described in Section 15610.30 of the Welfare and Institutions Code.

(d) "Financial abuse POST training" means an elder financial abuse training course certified by the Commission on Peace Officer Standards and Training.

(e) "Financial institution" means any bank, savings and loan, thrift, industrial loan company, credit union, or any branch of any of these institutions doing business in the state, as defined by provisions of the Financial Code.

(f) "Peace officer" means a sheriff, deputy sheriff, municipal police officer, or a peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, duly sworn under the requirements of state law, who satisfies any of the following requirements:

(1) ~~The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, is a member of a financial abuse specialist team and the~~ sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, has completed or participated as a lecturer in a financial abuse POST training program within the last 36 months. The completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, address relevant elder abuse laws, recognition of financial abuse and fraud, assessment of mental competence in accordance with the standards set forth in Part 17 (commencing with Section 810) of the Probate Code, reporting requirements and procedures for the investigation of financial abuse and related crimes, including neglect, and civil and criminal procedures for the protection of victims. The course may be presented as part of a training program that includes other subjects or courses.

(2) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, has consulted with a sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code, who satisfies the requirements of paragraph (1) concerning the declaration defined in subdivision (a) and obtained the signature of that sheriff, deputy sheriff, municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code on a declaration that substantially complies with the form described in Section 2954.

(g) “Property” means all personal property and real property of every kind belonging to, or alleged to belong to, the elder.

## Article 2. Estate Protection

2952. (a) A peace officer may issue a declaration, as provided in Section 2954, concerning an elder person if all of the following conditions are satisfied:

(1) There is probable cause to believe that the elder person is substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(2) There exists a significant danger that the elder person will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the elder person.

(3) There is probable cause to believe that a crime is being committed against the elder person.

(4) The crime is connected to the inability of the elder person to manage his or her financial resources or to resist fraud or undue influence, and that inability is the result of deficits in the elder person’s mental functions.

(5) The peace officer has consulted with an individual qualified to perform a mental status examination.

(b) If the requirements of subdivision (a) are satisfied, the peace officer may provide a signed declaration to the public guardian of the county. The declaration provided by the peace officer under this subdivision shall be signed

1 by both the peace officer and a supervisor from the  
2 county's adult protective services agency. The  
3 declaration shall be transmitted to the public guardian  
4 within 24 hours of its being signed, and may be  
5 transmitted by facsimile.

6 (c) (1) Upon receiving a signed declaration from a  
7 peace officer, the public guardian is authorized to rely on  
8 the information contained in the declaration to take  
9 immediate possession or control of the property of the  
10 elder person referred to in the declaration, and may issue  
11 a written recordable certification of that fact as provided  
12 for in Section 2901.

13 (2) The mere issuance of the declaration provided by  
14 this section shall not require the public guardian to take  
15 possession or control of property and shall not require the  
16 public guardian to make a determination that the  
17 requirements for the appointment of a conservator are  
18 satisfied.

19 (3) A public guardian acting in good faith is not liable  
20 when taking possession or control of property pursuant to  
21 this section.

22 (d) (1) If the public guardian takes possession of an  
23 elder person's property pursuant to this section, the  
24 public guardian shall attempt to find agents pursuant to  
25 the use of durable powers of attorney or successor  
26 trustees nominated in trust instruments, or other persons  
27 having legal authority under existing legal instruments,  
28 to manage the elder person's estate.

29 (2) If the public guardian is unable to find any  
30 appropriate person to manage the elder person's estate  
31 pursuant to paragraph (1), the public guardian shall  
32 attempt to find family members willing to manage the  
33 elder person's estate. If no documents exist appointing  
34 fiduciaries, the public guardian shall follow the priorities  
35 set forth in Article 2 (commencing with Section 1810) of  
36 Chapter 1 of Part 3.

37 (3) The public guardian shall take the steps described  
38 in paragraphs (1) and (2) within 15 days of taking  
39 possession of an elder person's property pursuant to this  
40 section.

1 2953. (a) (1) A public guardian who has taken  
2 possession or control of the property of an elder person  
3 pursuant to this chapter is entitled to petition a court of  
4 competent jurisdiction for the reasonable costs incurred  
5 by the public guardian for the protection of the person or  
6 the property, together with reasonable fees for services,  
7 including, but not limited to, reasonable attorneys' fees.  
8 These fees shall be payable from the estate of the elder  
9 person if the person is not deemed competent by the  
10 court and if any of the following apply:

11 (A) The public guardian or someone else is appointed  
12 as the temporary or general conservator of the estate.

13 (B) An attorney-in-fact, under a durable power of  
14 attorney, or a trustee, takes steps, or is notified of the need  
15 to take steps, to protect the estate of the elder person.

16 (C) An action is brought against the alleged financial  
17 abuser by the elder person, his or her conservator, a  
18 trustee, a fiduciary, or a successor in interest of the elder  
19 person, arising from a harm that the public guardian  
20 taking charge was intended to prevent or minimize.

21 (2) Any costs incurred by the public guardian  
22 pursuant to paragraph (1) shall be compensable as  
23 provided in Section 2902. Fees collected by the public  
24 guardian pursuant to this chapter shall be used for the  
25 activities described in this chapter.

26 (b) When a public guardian has taken possession or  
27 control of the property of an elder person pursuant to this  
28 chapter, the public guardian shall exercise reasonable  
29 care to ensure that the reasonable living expenses and  
30 legitimate debts of the elder person are addressed as well  
31 as is practical under the circumstances.

32 (c) Any person identified as a victim in a declaration  
33 described in Section 2954 may bring an ex parte petition  
34 in the superior court for an order quashing the  
35 certification issued by the public guardian as provided in  
36 subdivision (c) of Section 2952.

37 (1) Upon request by the petitioner, the court may  
38 defer filing fees related to the petition, and order the  
39 public guardian to authorize the release of funds from a  
40 financial institution to reimburse the petitioner the filing



1 fees from assets belonging to the petitioner, but shall  
2 waive filing fees if the petitioner meets the standards of  
3 eligibility established by subparagraph (A) or (B) of  
4 paragraph (6) of subdivision (a) of Section 68511.3 of the  
5 Government Code for the waiver of a filing fee.

6 (2) The court shall quash the certification if the court  
7 determines that there is insufficient evidence to justify  
8 the imposition on the alleged victim's civil liberties  
9 caused by the certification.

10 (3) If the court determines that there is sufficient  
11 evidence to justify the imposition on the alleged victim's  
12 civil liberties caused by the certification, the court may,  
13 in its discretion, do one or more of the following:

14 (A) Order disbursements from the alleged victim's  
15 assets, as are reasonably needed to address the alleged  
16 victim's needs.

17 (B) Appoint a temporary conservator of the alleged  
18 victim's estate, where the facts before the court would be  
19 sufficient for the appointment of a temporary  
20 conservator under Section 2250.

21 (C) Deny the petition.

22 (D) Award reasonable attorney's fees to respondent's  
23 attorney from the victim's estate.

24 (d) The public guardian shall serve or cause to be  
25 served a copy of the certification issued pursuant to  
26 Section 2952 on the victim by mail within 24 hours of the  
27 execution of the certification, or as soon thereafter as is  
28 practical, in the manner provided in Chapter 4  
29 (commencing with Section 413.10) of Title 5 of Part 2 of  
30 the Code of Civil Procedure.

31 2954. A declaration issued by a peace officer under  
32 this chapter shall not be valid unless it substantially  
33 complies with the following form:

34  
35 DECLARATION

36 PRINT OR TYPE

- 1 1. My name is: \_\_\_\_\_.
- 2 My badge number is: \_\_\_\_\_.
- 3 My office address and telephone number are:
- 4 \_\_\_\_\_
- 5 \_\_\_\_\_
- 6 \_\_\_\_\_.
- 7 2. I am a duly sworn peace officer presently employed by \_\_\_\_\_
- 8 \_\_\_\_\_, in the County of
- 9 \_\_\_\_\_, in the State of California.
- 10 3. On \_\_\_\_ (date) I personally interviewed \_\_\_\_\_ (victim) at
- 11 \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_ (address). The victim resides
- 12 at \_\_\_\_\_ (address, telephone number, and name of facility,
- 13 if applicable).
- 14 4. There is probable cause to believe that:
- 15 (a) \_\_\_\_\_ (Victim)
- 16 is substantially unable to manage his or her financial resources
- 17 or to resist fraud or undue influence, and
- 18 (b) There exists a significant danger the victim will lose all or
- 19 a portion of his or her property as a result of fraud or
- 20 misrepresentations or the mental incapacity of the victim, and
- 21 (c) There is probable cause to believe that a crime is being
- 22 committed against the victim, and
- 23 (d) The crime is connected to the victim's inability to manage
- 24 his or her financial resources or to resist fraud or undue
- 25 influence, and
- 26 (e) The victim suffers from that inability as a result of deficits
- 27 in one or more of the following mental functions:
- 28
- 29 INSTRUCTIONS TO PEACE OFFICER: CHECK ALL
- 30 BLOCKS THAT APPLY:
- 31 [A] ALERTNESS AND ATTENTION
- 32 ☐ 1. Levels of arousal. (Lethargic, responds only to vigorous
- 33 and persistent stimulation, stupor.)
- 34 ☐ 2. Orientation. Person \_\_\_\_\_ Time \_\_\_\_\_ (day, date,
- 35 month, season, year), Place \_\_\_\_\_ (address, town,
- 36 state), Situation \_\_\_\_\_ (why am I here?).
- 37 ☐ 3. Ability to attend and concentrate. (Give detailed
- 38 answers from memory, mental ability required to
- 39 thread a needle.)



[B] INFORMATION PROCESSING

Ability to:

- ☐ 1. Remember, i.e., short- and long-term memory, immediate recall. (Deficits reflected by: forgets question before answering, cannot recall names, relatives, past presidents, events of past 24 hours.)
- ☐ 2. Understand and communicate either verbally or otherwise. (Deficits reflected by: inability to comprehend questions, follow instructions, use words correctly or name objects; nonsense words.)
- ☐ 3. Recognize familiar objects and persons. (Deficits reflected by: inability to recognize familiar faces, objects, etc.)
- ☐ 4. Understand and appreciate quantities. (Perform simple calculations.)
- ☐ 5. Reason using abstract concepts. (Grasp abstract aspects of his or her situation; interpret idiomatic expressions or proverbs.)
- ☐ 6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest. (Break complex tasks down into simple steps and carry them out.)
- ☐ 7. Reason logically.

[C] THOUGHT DISORDERS

- ☐ 1. Severely disorganized thinking. (Rambling, nonsensical, incoherent, or nonlinear thinking.)
- ☐ 2. Hallucinations. (Auditory, visual, olfactory.)
- ☐ 3. Delusions. (Demonstrably false belief maintained without or against reason or evidence.)
- ☐ 4. Uncontrollable or intrusive thoughts. (Unwanted compulsive thoughts, compulsive behavior.)

[D] ABILITY TO MODULATE MOOD AND AFFECT  
 Pervasive and persistent or recurrent emotional state  
 which appears severely inappropriate in degree to the  
 patient's circumstances. Encircle the inappropriate  
 mood(s):

Anger	Euphoria	Helplessness
Anxiety	Depression	Apathy
Fear	Hopelessness	Indifference
Panic	Despair	

5. The property at risk is identified as, but not limited to, the following:

Bank account located at: \_\_\_\_\_  
 (name, telephone number, and  
 address of the bank branch)

Account number(s): \_\_\_\_\_

Securities/other funds located at: \_\_\_\_\_  
 (name, telephone number,  
 and address of  
 financial institution)

Account number(s): \_\_\_\_\_

Real property located at: \_\_\_\_\_  
 (address)

Automobile described as: \_\_\_\_\_  
 (make, model/color)

\_\_\_\_\_

(license plate number and state)

Other property described as: \_\_\_\_\_

Other property located at: \_\_\_\_\_

6. A criminal investigation will ☐ will not ☐ be commenced

against: \_\_\_\_\_

(name, address, and telephone number)

for alleged financial abuse.

BLOCKS 1, 2, AND 3 MUST BE CHECKED IN ORDER FOR  
 THIS DECLARATION TO BE VALID:

- ☐ 1. I am a peace officer in the county identified above.

- ☐ 2. I have consulted concerning this case with a supervisor in the county's adult protective services agency who has signed below, indicating that he or she concurs that, based on the information I provided to him or her, or based on information he or she obtained independently, this declaration is warranted under the circumstances.
- ☐ 3. I have consulted concerning this case with an individual qualified to perform a mental status examination.

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Signature of Declarant Peace Officer

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Date

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Signature of Concurring Adult Protective Services Supervisor

2955. Nothing in this chapter shall prohibit or restrict a public guardian from undertaking any other proceeding authorized by law.

SEC. 2. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Financial abuse" means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64 years) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

1 (ii) The property belongs to, or is held in express trust,  
2 constructive trust or resulting trust for, the elder or  
3 dependent adult.

4 (iii) The ownership or control of the property was  
5 acquired in whole or in part by the third party or someone  
6 acting in concert with the third party from the elder or  
7 dependent adult at a time when the elder or dependent  
8 adult was a dependent adult or was a person who would  
9 have been a dependent adult if he or she had then been  
10 between the ages of 18 and 64 years.

11 (B) Despite the request for the transfer of property,  
12 the third party without good cause either continues to  
13 hold the property or fails to take reasonable steps to make  
14 the property readily available to the elder or dependent  
15 adult, to his or her representative or to a court appointed  
16 receiver.

17 (C) The third party committed acts described in this  
18 paragraph in bad faith. A third party shall be deemed to  
19 have acted in bad faith if the third party either knew or  
20 should have known that the elder or dependent adult had  
21 the right to have the property transferred or made  
22 readily available. For purposes of this subdivision, a third  
23 party should have known of this right if, on the basis of the  
24 information received by the third party, it is obvious to a  
25 reasonable person that the elder or dependent adult had  
26 this right.

27 (b) For the purpose of this section, the term “third  
28 party” means a person who holds or has control of  
29 property that belongs to or is held in express trust,  
30 constructive trust or resulting trust for an elder or  
31 dependent adult.

32 (c) For the purposes of this section, the term  
33 “representative” means an elder or dependent adult’s  
34 conservator of the estate, or attorney-in-fact acting within  
35 the authority of the power of attorney.

36 SEC. 3. *If both this bill and AB 2107 are enacted and*  
37 *both bills amend Section 15610.30 of the Welfare and*  
38 *Institutions Code, the amendment to Section 15610.30*  
39 *made by AB 2107 shall prevail over the amendment to*

1 *that section made by this act, whether AB 2107 is enacted*  
2 *prior to, or subsequent to, the enactment of this act.*

3 SEC. 4. The provisions of this act are severable. If any  
4 provision of this act or its application is held invalid, that  
5 invalidity shall not affect other provisions or applications  
6 that can be given effect without the invalid provision or  
7 application.

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